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Key Points in Preparation for Oregon Legislative Session (2024): Examining the Multifaceted Impacts of Drug Decriminalization on Public Safety, Law Enforcement, and Prosecutorial Discretion

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Examining the Multifaceted Impacts of Drug Decriminalization on Public Safety, Law Enforcement, and Prosecutorial Discretion

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This is a shortened version of project findings. Please exercise caution in making conclusions beyond what is written in this report. Email researchers for greater context or clarification.

These findings are part of a 3-year study to examine the impacts of possession of PCS law changes on: (1) law enforcement discretion, (2) prosecutorial decision-making, (3) courts/sentencing, and (4) public safety. The key findings, unless noted, represent statewide trends and impacts. Prior to M110, other statewide changes in policy, law, and historical events such as the COVID-19 lockdown/court backlog and public defense crisis also had important impacts on enforcement, prosecution/sentencing, and public safety outcomes. As such, data collected during the early implementation of M110 is not likely a reliable predictor of its ultimate impact. The data reported on below is through 1 – 2 years post-M110. Although it sheds light on important questions, <u>it is too early to draw any definitive conclusions about long-term impacts of M110</u>.

Link to Year One Report: https://archives.pdx.edu/ds/psu/40119

See Table 1 in the Appendix for Acronym Key

Key Findings Related to the Criminal Justice System:

1. <u>PCS arrests decline after defelonization in 2017, stabilized soon afterward.</u> Then a sharp decline in PCS arrests during the COVID-19 lockdown, which continued post-M110 (no stabilization). Using arrest as a measure of proactivity, this trend goes against the law enforcement perception that M110 is solely responsible for less proactivity, PCS arrests had already been declining.
   - Based on modeling arrest trends from 2008 – 2022. Data from LEDS and CJC – PCS arrest. Controlling for unemployment, disconnected youth, HIDTA drug seizures, officer count (staffing), and other relevant variables. Key events: e.g., defelonization, COVID-19 lockdown, and M110.

2. <u>PCS charges slightly decline after defelonization in 2017 and continued a slow downward slope during the COVID-19 lockdown but have remained relatively stable post-M110.</u> Lack of congruence between law enforcement arrest and prosecutor charging beginning in 2010, continued to widen through COVID-19 lockdown. Gap converged in 2021. The likelihood of charging someone with low-level PCS was declining before M110 and even defelonization.
   - Based on modeling charge trends from 2008 – 2022. Data from ODYSSEY and OJD – PCS charge. Controlling for unemployment, disconnected youth, HIDTA drug seizures, officer count (staffing), and other relevant variables. Key events: e.g., defelonization, COVID-19 lockdown, and M110.

3. <u>Slow gradual decline in monthly drug court enrollment following the COVID-19 lockdown that continued through M110.</u> Enrollment has stabilized since late-2021/early-2022. Perception of treatment court personnel and prosecutors that most drug courts serve high risk/high needs populations and drug adjacent crimes (e.g., property offenses). The stabilization of drug court enrollment appears to indicate that drug courts have adapted to the changing legal landscape in Oregon including M110, which goes against the assumption that M110 will close drug courts.
   - Based on modeling drug court enrollment from 2008 – 2023. Data from ODYSSEY and OJD – number of individuals enrolled in drug court at the beginning of each month. 14 unique interviews with District Attorneys/Prosecutors and Treatment Court Administration/Staff. (Appendix Figure 5)

4. <u>Criminal justice system not as strong a conduit for getting individuals into treatment as law enforcement noted.</u> In most proactive arrest year (2016 – 2017), roughly 16,800 PCS arrests. Similarly, the highest enrolling month for Oregon Drug Courts was approximately 1,300 defendants. Yet, an estimated 327,157 individuals in Oregon with substance use disorder in need of treatment. The criminal justice system plays an important role, but many more pathways to treatment needed to address the totality of need in Oregon.
   - Based on data from LEDS and CJC – PCS arrest. Statistic on substance use from National Survey on Drug Use and Health (see Table 7 OHSU Gap Analysis).[i] 23 unique interviews with Law Enforcement Officers.

Key Findings Related to Public Safety:
1. <u>M110 has had no impact on violent crime rates.</u>
   - Based on modeling crime trends from 2008 – 2022. Data from UCR and NIBRS – crimes known to police. Controlling for unemployment, disconnected youth, HIDTA drug seizures, officer count (staffing), and other relevant variables. Key events: e.g., defelonization, COVID-19 lockdown, and M110. (Appendix Figure 2)

2. <u>M110 may be related to slight uptick in property crime.</u> Effect likely driven by uptick in urban areas of Oregon. However, other states that did not decriminalize have also experienced increase in property crime during this timeframe.
   - Based on modeling crime trends from 2008 – 2022. Data from UCR and NIBRS – crimes known to police. Controlling for unemployment, disconnected youth, HIDTA drug seizures, officer count (staffing), and other relevant variables. Key events: e.g., defelonization, COVID-19 lockdown, and M110. Not accounted for – inflation, often associated with property crime. (Appendix Figure 1)

3. <u>Drug overdose deaths have increased since M110, however, appears to be following a significant upward trend that began with COVID-19 lockdown.</u> Importantly, Oregon drug-overdose death rates are no different from similar states.
   - Based on modeling drug-overdose death rates from 2008 – 2022. Data from CDC and OHA. Controlling for economic factors, HIDTA drug seizures, and other relevant variables. Key events: e.g., defelonization, COVID-19 lockdown, and M110. (Appendix Figures 3 and 4)

Preliminary Recommendations:

1. **Structure Involvement of Criminal Justice System.** Law enforcement has a duty to address individuals engaging in behaviors that may harm themselves and others or involving property damage or theft. Such behaviors can often correlate with substance use and dependency. Look to LEAD program[ii] or Breaking the Cycle program[iii] as a guide. These programs provide law enforcement with discretion to connect people to treatment without making an arrest/charge for certain low-level offenses. <u>Consider responding to calls in tandem with service providers and/or peer support mentors. Relies on strong coordination between law enforcement and service providers to address public drug use, create more points of contact to treatment, and reduce recidivism and negative impacts of the system.</u> The United Nations (2009) recommends additive tools are necessary to address substance abuse disorder. If M110 is pulling away criminal justice involvement, that means the loss of an important tool and partner. <u>The legislature should work with criminal justice practitioners to help define their role.</u>

2. **Increasing Community Outreach and Client Connection to M110 Funded Programs.** <u>Establish non-law enforcement professionals to help address people in crises or exhibiting troublesome behavior.</u> Look to the CAHOOTS program in Eugene as a guide. This program involves a collaboration between law enforcement and the CAHOOTS team; crisis workers and medics respond to 911 calls involving individuals in behavioral health crisis, law enforcement officers respond only if there is a crime in progress or an imminent threat of danger/violence.[iv] Given OHSU's estimate of the size of the population with a substance use disorder in Oregon, a massive outreach and connection plan to get clients into programs needs to be prioritized. <u>The legislature should work to ensure M110 funded treatment programs are engaging in viable outreach efforts.</u>

3. **Recriminalization of PCS at this Early Point is Not Supported by the Data.** The historical trends show that during the era of criminalization, the Oregon criminal justice system did not connect

significant numbers of persons, compared to the population in need, into treatment opportunities. <u>Given the data available, we have no reason to expect a different result if user-level PCS is criminalized again.</u> Some of the disconcerting public safety trends post M110 cannot be directly attributed to M110 (e.g., continued COVID-19 impacts), it remains too early to discern M110's isolated impact on public safety with a high degree of certainty. <u>If the legislature chooses to criminalize public drug use, they should consider methods of ensuring such convictions and consequences do not create long-lasting systemic, and reverberating harm on individuals with substance use disorder (e.g., consider automatic expungement).</u> Public drug use arrests and jailing could contribute to adult in custody health concerns upon release without proper support (Recommendations 2 and 4).

4. **Other Programs/Solutions to Consider.** We encourage the legislature to explore other programs and solutions (e.g., harm reduction techniques,[v] safe use sites,[vi] medication-assisted treatment,[vii] increased access to naloxone, and prevention programs among youth[viii]) that show promising results.
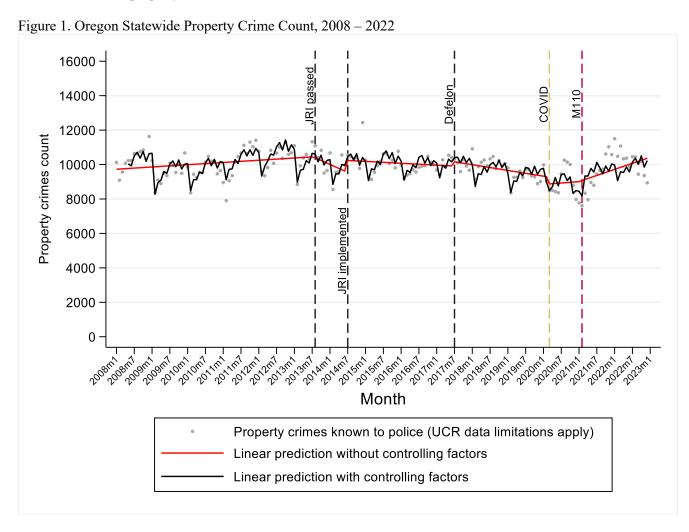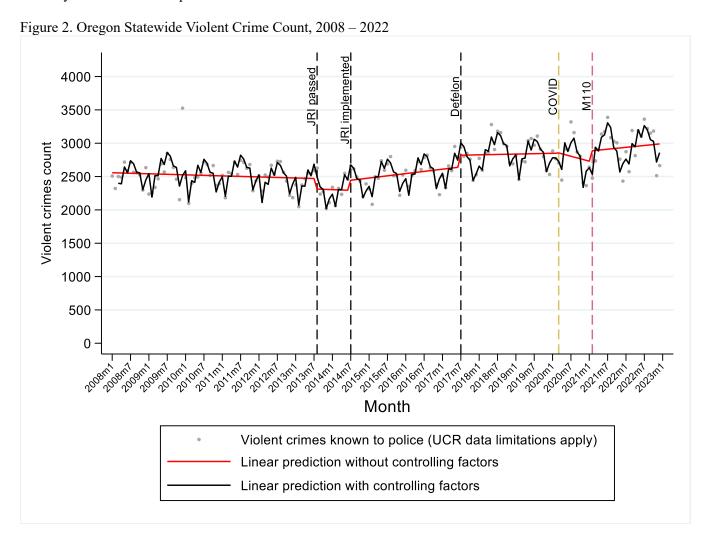
Appendix

Table 1. Acronym Key

PCS	Possession of Controlled Substances
M110	Measure 110- PCS Decriminalization
LEDS	Law Enforcement Data System- Oregon's law enforcement data management system
CJC	Criminal Justice Commission
HIDTA	High Intensity Drug Trafficking Area- Federal group created by Congress to address regional drug threats in the United States
ODYSSEY	Oregon Judicial Department data management system
OJD	Oregon Judicial Department
DOC	Department of Corrections
UCR	Uniform Crime Report- Compiles official data on crime in the United States
NIBRS	National Incident-Based Reporting System- An incident-based reporting system managed by the Federal Bureau of Investigations that collects data on crime occurrences
CDC	Centers for Disease Control and Prevention
OHA	Oregon Health Authority
LEAD	Law Enforcement Assisted Diversion
CAHOOTS	Crisis Assistance Helping Out on The Streets

The following graphs and associated text are provided here to supply some degree of context in a complex social problem. The information found here is meant to be informative insofar as the reader can understand the primary, preliminary conclusions as they exist today, and understand some of the evidence that led us to our recommendations stated above.
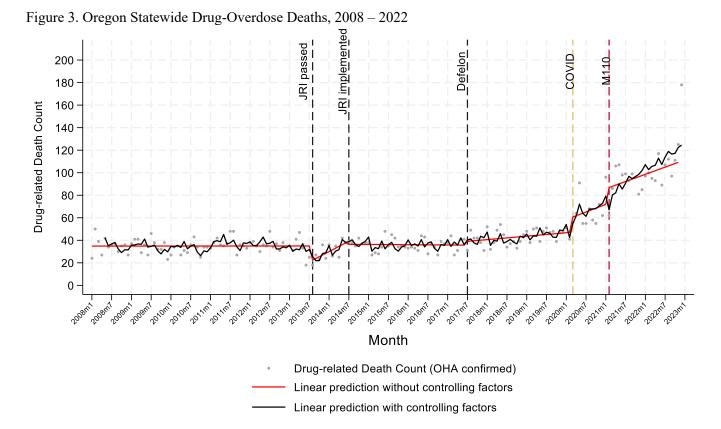
Our current models suggest M110 is related to slight uptick in property crime counts (Figure 1). Figure 1 provides the observed (gray dots) and predicted trends of property crime counts in Oregon. The predicted straight lines are products of interrupted time-series regressions with no covariates (i.e., no controlling factors, red line) and with covariates/controlling factors (black line). In the first year of M110, there appeared to be an associated increase of 253 property crimes per month in the state. This effect was likely driven by an increase in urban areas of Oregon (e.g., Multnomah County), and largely coincides with urban struggles to rebound from the COVID-19 challenges. The strongest predictors of the increases observed in the first year were the percent of disconnected youth in the population (youth who are not enrolled in school and who are unemployed), the unemployment rate, and the amount of drugs seized by law enforcement officers (lagged effects). In taking a broader look, we observed that other states that did not decriminalize have also experienced an increase in property crime during the same timeframe. As shown in Figure 1, the second year following M110's implementation, the state saw a return of property crime counts to the pre-COVID average. In models incorporating 2022 data, we find that M110 appears related to an initial increase of property crime, but that the effect wore off as time went on. We are continuing to refine these models, in particular, we are working to include inflation numbers as a control variable as this is a factor often tied to property crimes.

Figure 1. Oregon Statewide Property Crime Count, 2008 – 2022

In contrast, M110 had no detectible effect on violent crime counts (Figure 2). Figure 2 provides the observed (gray dots) and predicted trends of violent crime counts in Oregon. The predicted lines are products of interrupted time-series regressions with no covariates (i.e., controlling factors, red line) and with covariates (black line). In the first year of M110, there was net zero change in violent crime counts and counts were consistent with prior years/months. Year 2 continued this trend with a slight average rise likely due to seasonal trends. Consistent predictors of increases in violent crime include summer months and structural disadvantage factors. As factors such as economic inequality (ratio of the mean income for highest quintile of earners), percent of the county population who did not complete their high school education, the percent of disconnected youth in the county (i.e., youth who are not enrolled in school and who are unemployed), and single-parent households (single parents with children who are younger than 18-years of age) increase in a given month/year, so too does the violent crime count by about 190 crimes per month.

Figure 2. Oregon Statewide Violent Crime Count, 2008 – 2022

As shown by the continuous increase from 2020 through 2022 in Figure 3, there has been an increase of drug-overdose deaths in Oregon. Figure 3 provides the observed (gray dots) and predicted trends of drug-overdose deaths in Oregon. The predicted lines are products of interrupted time-series regressions with no covariates (i.e., controlling factors, red line) and with covariates (black line). Our current models suggest that this rise is unlikely to be attributable to M110. It is more likely that the rise has been a consistent development since the beginning of COVID, and coincides with reports of when fentanyl became prevalent in Oregon.[ix] The trend continued through 2022, with one spike-point reported at the end of the calendar year. <u>We currently observe this point as an outlier because it is a stand-alone point in the data, no different from other observations that do not fall neatly along the predicted lines in the years leading up to COVID</u>. Although these trends are concerning, as shown in Figure 4, the trends in drug-overdose deaths, including the spike at the end of 2022, are observed in other states as well. The states that observed similar large spikes include Arizona, Delaware, District of Columbia, Maine, Nevada, New Hampshire, North Dakota, Rhode Island, Washington, West Virginia, and Wyoming (Figure 4).

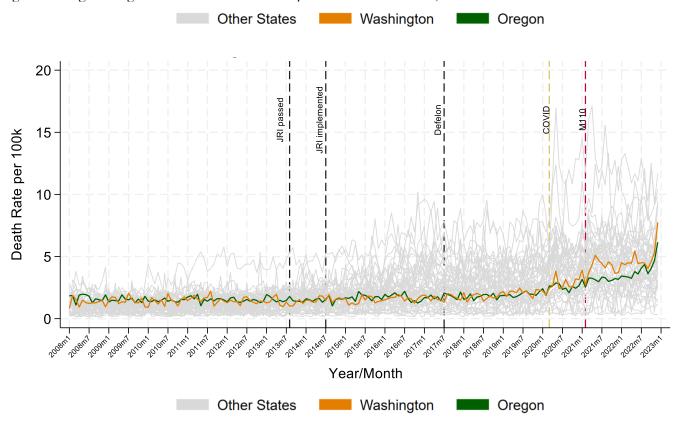Figure 3. Oregon Statewide Drug-Overdose Deaths, 2008 – 2022

Figure 4. Oregon Drug-Overdose Death Rate Compared with Other States, 2008 – 2022
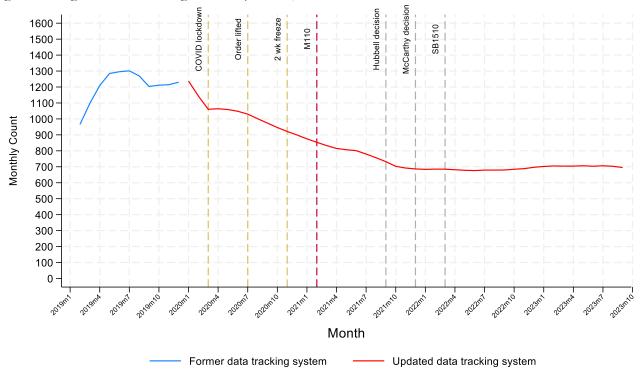
Figure 5. Oregon Statewide Drug Court Population, 2019 – 2023

Note. There was a greater effort of accurate statewide data recording in roughly 2017, thus the uptick in recorded enrollment at the left side of this Figure. This is not necessarily indicative of an actual increase in enrollment.

i https://www.oregon.gov/adpc/SiteAssets/Pages/gap-analysis/2023_January%2027_OHSU%20SUD%20Gap%20Analysis%20and%20Inventory%20Report.pdf
ii www.ojp.gov/library/publications/lead-program-evaluation-recidivism-report
iii www.crimesolutions.ojp.gov/ratedprograms/478
iv www.vera.org/behavioral-health-crisis-alternatives/cahoots; www.eugene-or.gov/DocumentCenter/View/66051/CAHOOTS-program-analysis-2021-update#:~:text=CAHOOTS%20divert%20rates%20remain%20between,higher%20in%20natures%20of%20calls
v www.crimesolutions.ojp.gov/ratedpractices/94
vi www.jamanetwork.com/journals/jamanetworkopen/articlepdf/2811766/chalfin_2023_oi_231224_1699030306.37786.pdf
vii Example based in Kittitas County, Washington: www.youtube.com/watch?v=H7_7WNGSZxs&authuser=0; app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=HCA%20Report%20-%20Medications%20for%20Opioid%20Use%20Disorder%20(MOUD)%20in%20Jails%20Program_0592f400-24e9-4895-992b-ce0300180d76.pdf
viii www.crimesolutions.ojp.gov/ratedprograms/77
ix
https://www.oregon.gov/oha/ph/preventionwellness/substanceuse/opioids/pages/fentanylfacts.aspx#:~:text=Fentanyl%20in%20Oregon,prevalent%20in%20Oregon%20until%202019.